

1 did conspire (a) to steal explosive materials which had moved in interstate and foreign commerce
2 (b) to receive, possess, transport, ship, conceal, and store stolen explosive materials which had
3 moved in interstate and foreign commerce, knowing and having reasonable cause to believe that
4 the explosive materials were stolen, and (c) to transport, ship, cause to be transported, and
5 receive explosive materials without a license or a permit, in violation of Title 18, United States
6 Code, Sections 844(k), 842(h), and 842(a)(3)(A).

7 2. In furtherance of the conspiracy and to attain the objects thereof, defendants
8 committed the following overt acts in the Northern District of California:

9 a. On or about July 2, 2004, at night:

10 (1) ALLAN, operating a van he had stolen, drove to an entrance to the
11 Crystal Springs Reservoir in San Mateo County.

12 (2) ALLAN used bolt cutters to cut the locks off the gate, returned to the
13 stolen van, and drove into the reservoir area.

14 (3) Once inside that area, ALLAN found explosives magazines (locations
15 where explosive materials are securely stored). ALLAN used bolt cutters to cut the locks off the
16 magazines and discovered explosive materials in the magazines.

17 (4) ALLAN stole explosive materials, placed them in the stolen van, and
18 drove away from the reservoir area.

19 (5) ALLAN transported the stolen explosive materials to a storage unit in
20 Hayward, California.

21 (6) At that location, ALLAN met with UTILE. ALLAN and UTILE
22 discussed and examined the stolen explosive materials.

23 (7) ALLAN and UTILE stored the stolen explosive materials.

24 (8) ALLAN and UTILE agreed to return to the reservoir area to steal
25 remaining explosive materials.

26 b. On or about July 5, 2004, at night:

27 (1) again operating a stolen van, ALLAN and UTILE returned to the
28 explosives magazines to steal remaining explosive materials.

1 (2) ALLAN and UTILE brought a blow torch and an oxygen tank to cut
2 through a metal encasement that had prevented ALLAN from being able to access and to cut
3 through all of the locks on or about July 2, 2004.

4 (3) UTILE used the blow torch to get through the encasement.

5 (4) Once past the metal encasement, ALLAN and UTILE cut the locks,
6 stole remaining explosives materials, loaded them in the stolen van, and drove out of the
7 reservoir area.

8 (5) ALLAN and UTILE drove to the storage unit in Hayward, but
9 determined it was too full to store the additional explosive materials.

10 c. On or about July 6, 2004:

11 (1) UTILE arranged to store the additional explosive materials at a
12 different storage unit in Oakland, California.

13 (2) ALLAN and UTILE transported the additional explosive materials
14 from the stolen van into a storage unit in Oakland, California.

15 3. ALLAN and UTILE conspired to and did steal, receive, possess, transport, ship,
16 conceal, and store explosives and explosive materials without a license or permit, including: C4;
17 grenades; grenade simulators; signal flares; detonation cord; TNT; fuses; Kinepak; and blasting
18 caps. At least some of the explosives and explosive materials, including C4, Hercules brand
19 electric blasting caps, and grenade simulators, had been manufactured outside the state of
20 California.

21 All in violation of Title 18, United States Code, Section 371.

22 COUNT TWO: (18 U.S.C. § 844(k) – Theft of Explosive Materials)

23 4. On or about July 2, 2004, in the Northern District of California, defendant

24 MICHAEL ALEXANDER ALLAN

25 did steal explosive materials which had moved in interstate and foreign commerce, including C4,
26 Hercules blasting caps, and grenade simulators, in violation of Title 18, United States Code,
27 Section 844(k).

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1 COUNT THREE: (18 U.S.C. § 842(a)(3)(A) – Unlicensed Transportation of Explosive Materials)

2 5. On or about July 2, 2004, in the Northern District of California, defendant

3 MICHAEL ALEXANDER ALLAN,

4 who was neither a licensee nor a permittee as defined in Title 18, United States Code, Section
5 841, did knowingly transport, ship, cause to be transported, and receive explosive materials, in
6 violation of Title 18, United States Code, Section 842(a)(3)(A).

7 COUNT FOUR: (18 U.S.C. § 844(k) – Theft of Explosive Materials)

8 6. On or about July 5, 2004, in the Northern District of California, defendants

9 MICHAEL ALEXANDER ALLAN and
10 DEAN UTILE

11 did steal explosive materials which had moved in interstate and foreign commerce, including C4,
12 Hercules blasting caps, and grenade simulators, in violation of Title 18, United States Code,
13 Section 844(k).

14 COUNT FIVE: (18 U.S.C. § 842(a)(3)(A) – Unlicensed Transportation of Explosive Materials)

15 7. On or about July 5, 2004, in the Northern District of California, defendants

16 MICHAEL ALEXANDER ALLAN and
17 DEAN UTILE

18 neither of whom was a licensee or a permittee as defined in Title 18, United States Code, Section
19 841, did knowingly transport, ship, cause to be transported, and receive explosive materials, in
20 violation of Title 18, United States Code, Section 842(a)(3)(A).

21 COUNT SIX: (18 U.S.C. § 842(h) – Possession of Stolen Explosives)

22 8. From on or about and between approximately July 2, 2004, and July 7, 2004, in the
23 Northern District of California, defendant

24 MICHAEL ALEXANDER ALLAN

25 did knowingly receive, possess, transport, ship, conceal, store, barter, sell, and dispose of stolen
26 explosive materials, including C4, Hercules blasting caps, and grenade simulators, which had
27 been shipped and transported in interstate and foreign commerce either before or after such
28 materials were stolen, knowing and having reasonable cause to believe that the explosive

1 materials were stolen, in violation of Title 18, United States Code, Section 842(h).

2 COUNT SEVEN: (18 U.S.C. § 842(h) – Possession of Stolen Explosives)

3 9. From on or about and between approximately July 5, 2004, and July 7, 2004, in the
4 Northern District of California, defendant

5 DEAN UTILE

6 did knowingly receive, possess, transport, ship, conceal, store, barter, sell, and dispose of stolen
7 explosive materials, including C4, Hercules blasting caps, and grenade simulators, which had
8 been shipped and transported in interstate and foreign commerce either before or after such
9 materials were stolen, knowing and having reasonable cause to believe that the explosive
10 materials were stolen, in violation of Title 18, United States Code, Section 842(h).

11 COUNT EIGHT: (18 U.S.C. § 842(i)(1) – Felon in Possession of Explosives)

12 10. From on or about and between July 2, 2004, and July 7, 2004, in the Northern
13 District of California, defendant

14 MICHAEL ALEXANDER ALLAN,

15 having been convicted in any court of a crime punishable by a term of imprisonment exceeding
16 one year, did knowingly ship and transport an explosive in and affecting interstate and foreign
17 commerce, including C4, Hercules blasting caps, and grenade simulators, and did knowingly
18 receive and possess an explosive which had been shipped and transported in and affecting
19 interstate and foreign commerce, including C4, Hercules blasting caps, and grenade simulators,
20 in violation of Title 18, United States Code, Section 842(i)(1).

21 COUNT NINE: (18 U.S.C. § 842(i)(1) – Felon in Possession of Stolen Explosives)

22 11. From on or about and between July 5, 2004, and July 7, 2004, in the Northern
23 District of California, defendant

24 DEAN UTILE,

25 having been convicted in any court of a crime punishable by a term of imprisonment exceeding
26 one year, did knowingly ship and transport an explosive in and affecting interstate and foreign
27 commerce, including C4, Hercules blasting caps, and grenade simulators, and did knowingly
28 receive and possess an explosive which had been shipped and transported in and affecting

1 interstate and foreign commerce, including C4, Hercules blasting caps, and grenade simulators,
2 in violation of Title 18, United States Code, Section 842(i)(1).

3 COUNT TEN: (18 U.S.C. § 842(a)(3)(B) – Distributing Explosives to Unlicensed Person)

4 12. On or about July 6, 2004, in the Northern District of California, defendant
5 MICHAEL ALEXANDER ALLAN,
6 who was neither a licensee nor a permittee as defined in Title 18, United States Code, Section
7 841, did knowingly distribute explosive materials including C4, Hercules blasting caps, and
8 grenade simulators, to Timothy Dean Byrd, who was also a person who was neither a licensee
9 nor a permittee as defined in 18 U.S.C. § 841, in violation of Title 18, United States Code,
10 Section 842(a)(3)(B).

11 COUNT ELEVEN: (18 U.S.C. § 842(d)(2) – Distributing Explosive Materials to a Felon)

12 13. On or about July 6, 2004, in the Northern District of California, defendant
13 MICHAEL ALEXANDER ALLAN
14 did knowingly distribute explosive materials including C4, Hercules blasting caps, and grenade
15 simulators, to Timothy Dean Byrd, who had been convicted prior to July 6, 2004, of a crime
16 punishable by imprisonment for a term exceeding one year, in violation of Title 18, United States
17 Code, Section 842(d)(2).

18 COUNT TWELVE: (18 U.S.C. § 842(a)(3)(B) – Distributing Explosives to Unlicensed Person)

19 14. On or about July 7, 2004, in the Northern District of California, defendant
20 MICHAEL ALEXANDER ALLAN,
21 who was neither a licensee nor a permittee as defined in Title 18, United States Code, Section
22 841, did knowingly distribute explosive materials, including grenades and grenade simulators, to
23 Gregory Sherinan, who was also a person who was neither a licensee nor a permittee as defined
24 in 18 U.S.C. § 841, in violation of Title 18, United States Code, Section 842(a)(3)(B).

25 COUNT THIRTEEN: (18 U.S.C. § 842(d)(2) – Distributing Explosive Materials to a Felon)

26 15. On or about July 7, 2004, in the Northern District of California, defendant
27 MICHAEL ALEXANDER ALLAN
28 did knowingly distribute explosive materials, including grenades and grenade simulators, to

1 Gregory Sherinan, who had been convicted prior to July 7, 2004, of a crime punishable by
2 imprisonment for a term exceeding one year, in violation of Title 18, United States Code, Section
3 842(d)(2).

4 COUNT FOURTEEN: (18 U.S.C. § 842(a)(3)(A) – Unlicensed Receipt of Explosives)

5 16. From on or about and between July 6, 2004, and July 8, 2004, in the Northern
6 District of California, defendant

7 TIMOTHY DEAN BYRD,

8 who was neither a licensee nor permittee as defined in Title 18, United States Code, Section 841,
9 did knowingly transport, ship, cause to be transported, and receive explosive materials, in
10 violation of Title 18, United States Code, Section 842(a)(3)(A).

11 COUNT FIFTEEN: (18 U.S.C. § 842(h) – Possession of Stolen Explosives)

12 17. From on or about and between July 6, 2004, and July 8, 2004, in the Northern
13 District of California, defendant

14 TIMOTHY DEAN BYRD

15 did knowingly receive, possess, transport, ship, conceal, store, barter, sell, and dispose of stolen
16 explosive materials, including C4, Hercules blasting caps, and grenade simulators, which had
17 been shipped and transported in interstate and foreign commerce either before or after such
18 materials were stolen, knowing and having reasonable cause to believe that the explosive
19 materials were stolen, in violation of Title 18, United States Code, Section 842(h).

20 COUNT SIXTEEN: (18 U.S.C. § 842(i)(1) – Felon in Possession of Explosives)

21 18. From on or about and between July 6, 2004, and July 8, 2004, in the Northern
22 District of California, defendant

23 TIMOTHY DEAN BYRD,

24 having been convicted in any court of a crime punishable by a term of imprisonment exceeding
25 one year, did knowingly ship and transport an explosive in and affecting interstate and foreign
26 commerce, including C4, Hercules blasting caps, and grenade simulators, and did knowingly
27 receive and possess an explosive which had been shipped and transported in and affecting
28 interstate and foreign commerce, including C4, Hercules blasting caps, and grenade simulators,

1 in violation of Title 18, United States Code, Section 842(i)(1).

2 COUNT SEVENTEEN: (18 U.S.C. § 842(a)(3)(A) – Unlicensed Receipt of Explosives)

3 19. From on or about and between July 7, 2004, and July 8, 2004, in the Northern
4 District of California, defendant

5 GREGORY SHERINAN,

6 who was neither a licensee nor permittee as defined in Title 18, United States Code, Section 841,
7 did knowingly transport, ship, cause to be transported, and receive explosive materials, including
8 grenades and grenade simulators, in violation of Title 18, United States Code, Section
9 842(a)(3)(A).

10 COUNT EIGHTEEN: (18 U.S.C. § 842(h) – Possession of Stolen Explosives)

11 20. From on or about and between July 7, 2004, and July 8, 2004, in the Northern
12 District of California, defendant

13 GREGORY SHERINAN

14 did knowingly receive, possess, transport, ship, conceal, store, barter, sell, and dispose of stolen
15 explosive materials, including grenades and grenade simulators, which had been shipped and
16 transported in interstate and foreign commerce either before or after such materials were stolen,
17 knowing and having reasonable cause to believe that the explosive materials were stolen, in
18 violation of Title 18, United States Code, Section 842(h).

19 COUNT NINETEEN: (18 U.S.C. § 842(i)(1) – Felon in Possession of Explosives)

20 21. From on or about and between July 7, 2004, and July 8, 2004, in the Northern
21 District of California, defendant

22 GREGORY SHERINAN,

23 having been convicted in any court of a crime punishable by a term of imprisonment exceeding
24 one year, did knowingly ship and transport an explosive in and affecting interstate and foreign
25 commerce, including grenades and grenade simulators, and did knowingly receive and possess an
26 explosive which had been shipped and transported in and affecting interstate and foreign
27 commerce, including grenades and grenade simulators, in violation of Title 18, United States
28 Code, Section 842(i)(1).

1 COUNT TWENTY: (18 U.S.C. § 1001 - False Statements to an Agency of the United States)

2 22. On or about July 8, 2004, in the Northern District of California, defendant

3 TIMOTHY DEAN BYRD,

4 in a matter within the jurisdiction of the executive branch of the Government of the United
5 States, did knowingly and willfully make the following material false statements to an agent of
6 the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), who had identified himself as
7 such:

8 a. After the ATF agent advised BYRD that ALLAN was in federal custody for
9 possession of explosives and that ALLAN had admitted distributing a package of explosives to
10 BYRD, BYRD falsely denied knowledge of receiving any package from ALLAN.

11 b. After the ATF agent advised BYRD that ALLAN was in federal custody for
12 possession of explosives and that ALLAN had admitted distributing a package of explosives to
13 BYRD, BYRD falsely stated that he did not know what the ATF agent was talking about.

14 c. After the ATF agent advised BYRD that ALLAN was in federal custody for
15 possession of explosives and that ALLAN had admitted distributing a package of explosives to
16 BYRD, BYRD falsely stated that he did not know why ALLAN had told law enforcement that
17 BYRD possessed any explosives or was involved in any way with any stolen explosives.

18 d. After later admitting that ALLAN had given BYRD a package, BYRD falsely claimed
19 that he did not know what the package contained.

20 All in violation of Title 18, United States Code, Section 1001.

21 COUNT TWENTY-ONE: (18 U.S.C. § 1001 - False Statements to an Agency of the United States)

22 23. On or about July 8, 2004, in the Northern District of California, defendant

23 GREGORY SHERINAN,

24 in a matter within the jurisdiction of the executive branch of the Government of the United
25 States, did knowingly and willfully make a material false statement to an agent of the Bureau of
26 Alcohol, Tobacco, Firearms, and Explosives, who had identified himself as such; specifically,
27 SHERINAN falsely stated that he had not received any explosive materials from ALLAN, in
28 violation of Title 18, United States Code, Section 1001.

SENTENCING ALLEGATIONS

24. With respect to each count of the Indictment with which defendant ALLAN is charged:

- a. ALLAN was a prohibited person;
- b. ALLAN knowingly distributed explosive materials to prohibited persons;
- c. The offense involved 25 pounds or more of explosive materials, and, in fact, involved more than 100 but less than 500 pounds of explosive materials;
- d. The offense involved explosive materials that ALLAN knew or had reason to believe were stolen;
- e. The offense involved firearms described in 26 U.S.C. § 5845(a);
- f. The offense involved three or more firearms as described in 26 U.S.C. § 5845(a), and, in fact, involved more than 3 but fewer than 200 such firearms;
- g. The offense involved destructive devices;
- h. The offense involved stolen firearms;
- i. ALLAN committed the instant offense while under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status; and
- j. ALLAN committed the instant offense less than two years after release from imprisonment on a sentence counted under United States Sentencing Guideline Sections 4A1.1(a) or (b).

25. With respect to each count of the Indictment with which defendant UTILE is charged:

- a. UTILE was a prohibited person;
- b. The offense involved 25 pounds or more of explosive materials, and, in fact, involved more than 100 but less than 500 pounds of explosive materials;
- d. The offense involved explosive materials that UTILE knew or had reason to believe were stolen;
- e. The offense involved firearms described in 26 U.S.C. § 5845(a);
- f. The offense involved three or more firearms as described in 26 U.S.C. § 5845(a), and, in fact, involved more than 3 but fewer than 200 such firearms;
- g. The offense involved destructive devices;

- 1 h. The offense involved stolen firearms; and
- 2 i. UTILE committed the instant offense while under a criminal justice
- 3 sentence, including probation, parole, supervised release, imprisonment,

4 26. With respect to each count of the Indictment with which defendant BYRD is
5 charged:

- 6 a. BYRD was a prohibited person;
- 7 b. The offense involved 25 pounds or more of explosive materials;
- 8 d. The offense involved explosive materials that BYRD knew or had reason
- 9 to believe were stolen;
- 10 e. The offense involved firearms described in 26 U.S.C. § 5845(a);
- 11 f. The offense involved three or more firearms as described in 26 U.S.C. §
- 12 5845(a), and, in fact, involved more than 3 but fewer than 200 such
- 13 firearms;
- 14 g. The offense involved destructive devices;
- 15 h. The offense involved stolen firearms;
- 16 i. BYRD committed the instant offense while under a criminal justice
- 17 sentence, including probation, parole, supervised release, imprisonment,
- 18 work release, or escape status; and
- 19 j. BYRD committed the instant offense less than two years after release from
- 20 imprisonment on a sentence counted under United States Sentencing
- 21 Guideline Sections 4A1.1(a) or (b).

22 27. With respect to each count of the Indictment with which defendant SHERINAN is
23 charged:

- 24 a. SHERINAN was a prohibited person;
- 25 b. The offense alleged in Count 21 involved 25 pounds or more of explosive
- 26 materials, and, in fact, involved more than 100 but less than 500 pounds of
- 27 explosive materials;
- 28 d. The offense involved explosive materials that SHERINAN knew or had
- reason to believe were stolen;
- e. The offense involved firearms described in 26 U.S.C. § 5845(a);
- f. The offense involved three or more firearms as described in 26 U.S.C. §
- 5845(a);
- g. The offense involved destructive devices;
- h. The offense involved stolen firearms;

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- i. SHERINAN committed the instant offense while under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status; and
- j. SHERINAN committed the instant offense less than two years after release from imprisonment on a sentence counted under United States Sentencing Guideline Sections 4A1.1(a) or (b).

DATED: July 22, 2004 A TRUE BILL.

FOREPERSON

KEVIN V. RYAN
United States Attorney

J. DOUGLAS WILSON
Acting Chief, Oakland Branch

(Approved as to form: _____)
AUSA Sprague